

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



June 1, 2020

Scott Adair  
Director – West Power  
Direct Energy Business, LLC  
12 Greenway Plaza, Suite 250  
Houston, TX 77046

Dear Mr. Adair,

On October 31, 2019, Direct Energy Business (Direct Energy) filed a waiver request via Advice Letter 53-E for its 2020 year-ahead local Resource Adequacy (RA) requirement in the Sierra, Stockton, and San Diego-Imperial Valley (San Diego-IV) local areas. Direct Energy seeks relief from its remaining 2020 year-ahead local RA obligation and any potential Commission-imposed penalties for deficiencies. Direct Energy's waiver request demonstrates that it pursued all commercially reasonable efforts in procuring local capacity to meet its local RA obligations. The Energy Division of the California Public Utilities Commission (Commission) approves Advice Letter 53-E, Direct Energy's request for a penalty waiver.

Commission Decision (D.) 06-06-064 established waiver provisions for local Resource Adequacy (RA) procurement. D.19-06-026 established 2020 compliance year obligations for all Load Serving Entities (LSEs). On October 31, 2019, Direct Energy submitted its year-ahead local RA compliance filing, showing a deficiency in the Sierra, Stockton, and San Diego-IV local areas. Direct Energy also submitted a request for penalty waiver for this deficiency via Advice Letter 53-E pursuant to D.06-06-064 and D.19-06-026.

On November 20, 2019, the Public Advocates Office (Cal Advocates) submitted a protest to Advice Letter 53-E, stating that Direct Energy only provided narrative summaries of their efforts to obtain local RA, while eleven other LSEs provided solicitation materials, bids received or submitted, and email communications. Cal Advocates requests that the Commission require Direct Energy amend their advice letter to provide this documentation. Cal Advocates also recommends that the Commission evaluate the availability of capacity, specifically compare reported local RA capacity deficiencies for LSEs from other LSEs that show long position for the same local areas to determine whether the deficient LSEs made all reasonable efforts to procure. Cal Advocates also recommends evaluating CAISO's list of available capacity to determine whether resource owners exercised market power through withholding capacity or offering unreasonably high bids. Cal Advocates states that this information can help evaluate whether LSEs have sufficiently justified their need for a waiver.

On November 26, 2019, Direct Energy replied to Cal Advocate's protest, arguing that they provided more than sufficient information to satisfy the requirements of D.06-06-064 and D.07-06-029. Direct Energy states that they provided detail information on their participation in the IOUs' Request for Offers (RFOs), RFOs they issued, and the results of the RFOs, as well as a communications log with potential counterparties and additional details on its post-RFO efforts. Direct Energy also argues that the Commission has found a detailed narrative of procurement efforts, supported by a sworn affidavit sufficient to grant waiver requests in prior years, for example, in 2018. Direct Energy requests the Commission to reject Cal Advocate's demand for it to amend its Advice Letter. However, Direct Energy agrees with Cal Advocates' request for an examination of local capacity availability and the potential abuse of market power by resource owners. Direct Energy requests that the Commission specifically investigate whether resource owners withholding capacity or offering at unreasonably high prices caused the local RA deficiencies experienced by Direct Energy and other LSEs. Direct Energy further requests that the Commission examine the extent to which disaggregating the "PG&E Other" local area contributed to local RA deficiencies and consequent waiver requests.

Section 3.3.12 of D.06-06-064 describes a standard that an LSE may use to demonstrate that it could not reasonably achieve its LCR obligations:

*(1) a demonstration that the LSE reasonably and in good faith solicited bids for its RAR capacity needs along with accompanying information about the terms and conditions of the Request for Offer or other form of solicitation, and*

*(2) a demonstration that despite having actively pursued all commercially reasonable efforts to acquire the resources needed to meet the LSE's local procurement obligation, it either*

*(a) received no bids, or*

*(b) received no bids for an unbundled RA capacity contract of under \$40 per kW-year or for a bundled capacity and energy product of under \$73 per kW-year, or*

*(c) received bids below these thresholds but such bids included what the LSE believes are unreasonable terms and/or conditions, in which case the waiver request must demonstrate why such terms and/or conditions are unreasonable.*

*An LSE's waiver request that meets these requirements is a necessary but not a sufficient condition for the grant of such waiver. The Commission will also consider other information brought to its attention regarding the reasonableness of the waiver request.*

Energy Division reviewed the documentation provided by Direct Energy on its efforts to procure local capacity and issued a data request to Direct Energy on January 3, 2020 to seek more information, including bids offered into other RFOs and bids received from its RFOs. Direct Energy provided the relevant documentation requested by Energy Division.

Energy Division has reviewed Direct Energy's actions and finds them reasonable considering the capacity available to meet Direct Energy's local RA obligation. In this case, Energy Division finds that Direct Energy held solicitations and pursued all commercially reasonable efforts to acquire the resources needed to meet the LSE's local procurement obligation. Direct Energy's waiver request includes confidential market-sensitive information supporting this finding. Thus, Energy Division grants Advice Letter 53-E, Direct Energy's request for a waiver of Commission penalties related to its year-ahead 2020 local RA procurement.

Sincerely,



Edward Randolph  
Deputy Executive Director for Energy and Climate Policy /  
Director, Energy Division

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